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## **Environmental Indicators: Formalized Monitoring in the Service of Environmental Justice**

*Eric Karl Roth*

### *Code Section Affected*

Public Resources Code § 71080 (new).  
AB 1360 (Steinberg); 2003 STAT. Ch. 4.

### I. INTRODUCTION

The California state government spent more than \$1.5 billion on environmental protection programs in the 2002-2003 fiscal year, and the state's 2003-2004 budget includes approximately \$1.25 billion for these programs as well.<sup>1</sup> With an annual investment of this size, it is not surprising that high expectations arose for environmental protection and for the improved health and safety of the citizenry. However, legislators, environmental activists, and advocates for the rights of low-income Californians are concerned that shortcomings in environmental health have a disproportionate impact on members of lower-income communities.<sup>2</sup>

The California Environmental Protection Agency ("Cal/EPA") claims an historical commitment to environmental justice<sup>3</sup> which will be tested under new legislation that formalizes the Agency's procedures for environmental monitoring, reporting its findings and using its findings to guide policy making.<sup>4</sup>

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1. Legislative Analyst's Office, *Analysis of the 2003-04 Budget Bill*, at B11-12, at [http://www.lao.ca.gov/analysis\\_2003/resources/resources\\_anl03.pdf](http://www.lao.ca.gov/analysis_2003/resources/resources_anl03.pdf) (last visited Sept. 10, 2004) [hereinafter *LAO Budget Analysis*] (copy on file with the *McGeorge Law Review*); Office of State Assemblyman D. Steinberg, *AB 1360 Environmental Protection Indicators for California, Fact Sheet*, at 1.

2. See CAL. GOV'T CODE § 65040.12 (West Supp. 2004) (requiring the Office of Planning and Research to administer and enforce its programs in a way that considers "fair treatment of people of all races, cultures, and incomes"); CAL. PUB. RES. CODE § 71113 (West Supp. 2004) (requiring Cal/EPA to form a working group to identify and address environmental justice "gaps" in existing programs); see generally Torie Osborn & Carlos Porras, *Environmental Justice All About Democracy*, DAILY NEWS OF L.A., Nov. 15, 2002, at N23 (defining environmental justice as the intersection of civil rights and environmentalism); Steven Korenstein & Bill Piazza, *An Exposure Assessment of [PM.Sub 10] from a Major Highway Interchange: Are Children in Nearby Schools at Risk?*, J. ENVTL. HEALTH, Sept. 1, 2002, at 9 (concluding that adverse effects of air pollution "are particularly evident in children and even more so in minority children").

3. See Memorandum from Winston H. Hickox, Cal/EPA Secretary, to Cal/EPA employees, Cal/EPA's Commitment to Environmental Justice (Mar. 29, 2002) (on file with the *McGeorge Law Review*) (stating that California "stands as one of the nation's leaders on the issue of environmental justice").

4. See ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS, COMMITTEE ANALYSIS OF AB 1360, at 3-4 (Apr. 8, 2003). Further explaining the need for AB 1360, the Committee asserted that:

CalEPA has stated that it is firmly committed to the achievement of environmental justice. Environmental justice refers to the fair treatment of people of all races, cultures, and income

Chapter 4 is a significant step in the effort to codify such procedures, and may provide an important, viable framework for previously uncoordinated efforts to further environmental justice.<sup>5</sup>

## II. THE EPIC PROJECT

In the year 2000, the Cal/EPA established the Environmental Protection Indicators for California (“EPIC”) project.<sup>6</sup> Before EPIC, a variety of state-sponsored environmental programs in California attempted to determine their own effectiveness by measuring various activities including granting permits, issuing notices of violations, and adopting regulatory standards.<sup>7</sup> EPIC was inspired by programs underway in other states, notably New Jersey and Florida, as well as activities of the Dutch National Institute of Public Health and the Environment.<sup>8</sup>

A premise of the EPIC project is that measuring such activities does not describe the condition of the environment or the effects of human activity on environmental health.<sup>9</sup> The goal of EPIC has been to determine whether the programs of the various state agencies actually result in improvements in environmental quality and public health.<sup>10</sup> Scientific measurements of the

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with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment implies that no person, or group of people, should shoulder a disproportionate share of the negative environmental impacts such as exposure to air pollutants, hazardous waste facilities, and other forms of environmental pollution. Supporters of this bill contend that policy makers and the public need to know not just what indicators show about the state’s environment generally, but also whether low-income communities and communities of color are bearing disproportionately the burdens of pollution.

*Id.*

5. See generally CAL. PUB. RES. CODE § 71080 (enacted by Chapter 4) (explaining that “[o]ver the years, . . . there have been few meaningful, objective measures with which to determine the environmental impact of these efforts).

6. See SENATE COMMITTEE ON ENVIRONMENTAL QUALITY, COMMITTEE ANALYSIS OF AB 1360, at 3-4 (July 7, 2003) (describing an environmental indicator as “a scientifically based tool to track changes that are taking place in the environment”).

7. See SENATE COMMITTEE ON ENVIRONMENTAL QUALITY, COMMITTEE ANALYSIS OF AB 1360, at 4-5 (July 7, 2003) (stating that measures of bureaucratic activity “do not directly address whether there have been environmental quality improvements as a result of the state’s programs”); see generally California Air Resources Board, Environmental Protection Agency, *ARB Permits, Certifications, Exemptions, and Registrations*, at <http://www.arb.ca.gov/permits/permits.htm> (last updated Sept. 8, 2003) (copy on file with the *McGeorge Law Review*) (providing information on permit, certification, and registration requirements).

8. Office of Environmental Health Hazard Assessment, Environmental Protection Indicators for California, at 264 (Apr. 2002), at <http://www.oehha.ca.gov/multimedia/epic/2002rept.pdf/entireEPIC%20Report.pdf> [hereinafter *EP Indicators*] (copy on file with the *McGeorge Law Review*).

9. *EP Indicators*, *supra* note 8, at 265 (stating that information about “activities such as permits issued, grants awarded, or violations committed . . . convey little about the condition of, or effects on the environment”).

10. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 1360, at 2 (April 30, 2003)

environment can serve as a basis for evaluations of program effectiveness.<sup>11</sup> The results of these evaluations are then to be fed back into the decision-making processes both in administering existing programs and initiating new ones.<sup>12</sup> The project initiators concluded it was necessary to measure the end result of various activities, and to focus on the impacts of those activities on the environment in order to determine how effective the various state environmental programs have been.<sup>13</sup> These end results are called "indicators"<sup>14</sup> in the context of the EPIC project, and include measurements of air and water quality, waste management, pesticides in the environment, "transboundary issues," human health, and broader measures of ecosystem health.<sup>15</sup> Presently, over ninety indicators have been listed, and they are categorized according to whether or not sufficient data exists for presenting a status or trend.<sup>16</sup> "Background" indicators "do not represent particular environmental issues in themselves, but provide information with which to interpret the meaning of various environment-specific, quantifiable indicators."<sup>17</sup>

### III. EXISTING LAW AND RELATED LEGISLATION

Every four years the governor of California is required to prepare a State Environmental Goals and Policy Report ("Report")<sup>18</sup> containing a long-term view of growth in California and goals for environmental health relative to stated priorities.<sup>19</sup> The Governor's Office of Planning and Research ("OPR") is required to report every four years on the State's progress toward achieving the goals in the Report.<sup>20</sup> A Report has not been produced since 1978,<sup>21</sup> which is indicative of

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11. See *id.* (describing scientific measurements as tangible indications of whether environmental quality is improving over time and "whether or not these improvements result from specific regulatory efforts").

12. See SENATE COMMITTEE ON ENVIRONMENTAL QUALITY, COMMITTEE ANALYSIS OF AB 1360, at 6 (July 7, 2003) (explaining the "potential to use the information derived from the project to improve environmental protection decision making").

13. *Id.* at 4-5.

14. *Id.* at 3 (defining "environmental indicators" as "scientific measurements of environmental conditions").

15. *EP Indicators*, *supra* note 8, at i. "Transboundary issues" include "global climate change, stratospheric ozone depletion, pollution in the California/Baja California, Mexico border region, and invasive species." *Id.* at vi.

16. *Id.* at x; SENATE COMMITTEE ON ENVIRONMENTAL QUALITY, COMMITTEE ANALYSIS OF 1360, at 5-6 (July 7, 2003) (explaining that the indicators are classified as Type I, II, or III. "Type I indicators are those where adequate data re available to present a status . . . or trend . . . and Type III indicators are conceptual indicators for which data collection does not exist.").

17. *EP Indicators*, *supra* note 8, at xiv (listing the background indicators tracked by the EPIC program, including indicators of energy consumption, life expectancy, infant death rate, and gross state product, among others).

18. CAL. GOV'T CODE § 65041 (West 1997 & Supp. 2004).

19. See *id.* § 65041.1 (describing the state planning priorities as "intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety in the state, including in urban, suburban, and rural communities").

20. *Id.* § 65048.

California's lack of an orderly, consistent planning process.<sup>22</sup> The Report is intended to influence the allocation of funds via the budget process.<sup>23</sup>

Since 1999, California law has required Cal/EPA to administer and enforce its programs in a way that "ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations."<sup>24</sup> Existing law requires the Secretary for Environmental Protection to maintain a Working Group on Environmental Justice<sup>25</sup> to advise the Cal/EPA on the creation of an agency-wide strategy for "identifying and addressing any gaps in existing programs . . . that may impede the achievement of environmental justice,"<sup>26</sup> and to recommend the criteria on which such strategy is to be based.<sup>27</sup> The Working Group is also chartered to "[r]ecommend procedures for collecting, maintaining, analyzing, and coordinating information relating to an environmental justice strategy."<sup>28</sup> In addition, there is a statutorily created Advisory Committee on Environmental Justice, composed of outside "stakeholders" in the environmental justice arena, which advises the internal Working Group on Environmental Justice.<sup>29</sup> The Advisory Committee is composed of representatives of local planning agencies and air quality districts, environmental groups, community organizations, the business community, and others.<sup>30</sup>

AB 1553, enacted in 2001, requires the OPR to incorporate environmental justice principles into its guidelines for the development of general plans by local governments.<sup>31</sup>

Attendant with efforts to formalize the general environmental planning process, there are now ongoing attempts via pending and recently enacted

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21. SENATE COMMITTEE ON ENVIRONMENTAL QUALITY, COMMITTEE ANALYSIS OF AB 1360, at 8 (July 7, 2003).

22. See SENATE LOCAL GOVERNMENT COMMITTEE, COMMITTEE ANALYSIS OF AB 857, at 3-4 (July 2, 2001) (stating that California is unusual among large states in its lack of a coherent overall planning process due, at least in part, to a lack of executive leadership in the area).

23. ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS, COMMITTEE ANALYSIS OF AB 1360, at 4 (Apr. 8, 2003).

24. CAL. PUB. RES. CODE § 71110(a) (West Supp. 2004); see generally California Environmental Protection Agency Advisory Committee on Environmental Justice, *Draft Recommendations of the California Environmental Protection Agency (Cal/EPA) Advisory Committee on Environmental Justice to the Cal/EPA Interagency Working Group on Environmental Justice*, at 1-3 (July 11, 2003), available at <http://www.calepa.ca.gov/EnvJustice/Documents/2003/JulDraftRec.pdf> [hereinafter *EJ Advisory Committee Recommendations*] (copy on file with the *McGeorge Law Review*) (supplying a brief introduction to the history of "environmental racism," the roots of environmental justice in civil rights, and the development of California law).

25. CAL. PUB. RES. CODE § 71113 (West Supp. 2004).

26. *Id.* § 71113(a).

27. *Id.* § 71113(c)(2).

28. *Id.* § 71113(c)(4).

29. *EJ Advisory Committee Recommendations*, *supra* note 24, at 3; CAL. PUB. RES. CODE § 71114 (West Supp. 2004).

30. CAL. PUB. RES. CODE § 71114.

31. CAL. GOV'T CODE § 65040.12(c) (West Supp. 2004); see *EJ Advisory Committee Recommendations*, *supra* note 24, at 6-7 (detailing the statutorily mandated relationships among the Cal/EPA groups charged with designing and implementing plans for enhancing environmental justice through the activities of Cal/EPA).

legislation to enhance environmental justice in specific areas. AB 1020 (Laird)<sup>32</sup> would create a cause of action against water polluters that can be brought by public water systems. The bill specifies some of the recoverable costs, including those involved in cleaning up and subsequently protecting the water supply, as well as the plaintiff's attorney's fees.<sup>33</sup> AB 1020 was inspired in part by pending litigation involving MTBE pollution in actions brought by several public water systems, and the uncertainties the public water systems face in recovering the real costs incurred as a result of the pollution, including the cost of bringing the action itself.<sup>34</sup>

Also in the area of water system safety, newly enacted SB 923<sup>35</sup> specifies when the State Water Resources Control Board or a regional water quality control board may waive the normal restrictions on waste discharged into waters of the state.<sup>36</sup> Prior law allowed for such waivers if they were not against "the public interest," but did not subject them to specified conditions.<sup>37</sup> SB 923 specifies the conditions under which a waiver can be granted, and requires the waiver grantee to pay an annual fee.<sup>38</sup> The discharge is then monitored quarterly for at least one year and at least once every two years thereafter.<sup>39</sup>

In the realm of air quality, newly enacted SB 352 prohibits placing a school site within five hundred feet of a "busy roadway unless the air quality at the site does not pose a health risk to pupils or staff."<sup>40</sup> SB 352 further provides funding "for the investigation and control of air quality problems and allows deferred maintenance funding to be used for the installation of air quality control systems."<sup>41</sup> SB 352 is innovative because it identifies busy roadways as "major sources of pollution," and requires that they be taken into account when siting schools.<sup>42</sup>

#### IV. CHAPTER 4

Chapter 4 codifies the Environmental Protection Indicators of California project, which was created by the Cal/EPA to provide "tangible measurements"

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32. AB 1020 (2003) (as amended on Sept. 8, 2003, but not enacted).

33. SENATE COMMITTEE ON ENVIRONMENTAL QUALITY, COMMITTEE ANALYSIS OF AB 1020, at 2-3 (June 23, 2003).

34. *Id.* at 5.

35. CAL. WATER CODE § 13269 (enacted by Chapter 801).

36. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 923, at 2 (June 4, 2003).

37. *Id.* at 1.

38. *See id.* at 2 (requiring the discharge to be consistent with any existing applicable water quality control plan, that it not violate any applicable water quality objective, and that it not violate the federal Clean Water Act).

39. *Id.*

40. CAL. EDUC. CODE § 17213 (enacted by Chapter 668); *see also* SENATE COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF SB 352, at 1 (Apr. 2, 2003) (summarizing the provisions of the bill).

41. SENATE COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF SB 352, at 1 (Apr. 2, 2003).

42. *Id.* at 3-4.

of the effectiveness of regulatory programs and requirements.<sup>43</sup> Chapter 4 also explicitly states the need to address “the disproportionate impact [of environmental conditions] on low-income communities and communities of color” in California, and uses this need as one justification for identifying and monitoring the environmental indicators that EPIC describes.<sup>44</sup>

Chapter 4 requires the Cal/EPA to maintain the existing EPIC system of environmental indicators in order to achieve a specified list of objectives.<sup>45</sup> Chapter 4 defines an environmental indicator as “an objective and scientifically based measure that represents information on environmental conditions, releases of contaminants into the environment, or the effects of those releases.”<sup>46</sup> The objectives these indicators will help to achieve include evaluating “the effectiveness of [existing Cal/EPA] programs in improving environmental quality and protecting public health [(particularly in low-income] communities and communities of color,”<sup>47</sup> and describing the current state of California’s environmental health for the benefit of policymakers.<sup>48</sup> In addition to guiding the modification of existing Cal/EPA programs and assisting in the creation of new programs in response to changes in environmental conditions over time, Chapter 4 is intended to help Cal/EPA officials make budget decisions relating to the most significant environmental problems.<sup>49</sup>

Chapter 4 affirms the selection of the Office of Environmental Health Hazard Assessment (“OEHHA”) as the lead agency for developing new environmental indicators and modifying existing ones, and “for maintaining the database of the indicators.”<sup>50</sup> OEHHA is required to lead an intra-agency workgroup comprised of members of the various departments, offices, and boards within Cal/EPA.<sup>51</sup> OEHHA shall also consult with the state Resources Agency, the Department of Health Services, and other state agencies in order to develop and maintain the list

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43. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 1360, at 1 (Apr. 30, 2003).

44. CAL. PUB. RES. CODE § 71080(e) (enacted by Chapter 4).

45. *Id.* § 71081(a).

46. *Id.* § 71081(b)(2).

47. *Id.* § 71080(a)(2).

48. *Id.* § 71081(a)(1); *see* ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 1360, at 2 (Apr. 30, 2003). The committee explained the use of such data by policy makers as follows:

If substantial levels of . . . resources have been brought to bear on a particular environmental program over the years and no appreciable improvement has occurred in related environmental indicators, policy decision makers and budget analysts should respond by looking [at] improving regulatory efficiency or looking for alternative ways of achieving environmental improvement.

*Id.*

49. CAL. PUB. RES. CODE § 71081(a)(4) (enacted by Chapter 4); *but see EJ Advisory Committee Recommendations*, *supra* note 24, at 9 (noting that “some commenters expressed hope that Cal/EPA would avoid using research and data gathering to delay acting on issues that require immediate attention”).

50. CAL. PUB. RES. CODE § 71081(d) (enacted by Chapter 4).

51. *Id.*

of indicators.<sup>52</sup> OEHHA is also required to “consult with the intra-agency workgroup in . . . program planning, policy formation, and other decisionmaking processes.”<sup>53</sup> OEHHA is explicitly authorized to utilize sources of information from outside of Cal/EPA in its continual development of the list of indicators.<sup>54</sup>

Finally, Chapter 4 requires Cal/EPA to report to the Governor and the legislature by January 1, 2006, “and by January 1 every other year thereafter,” on the ways in which the environmental indicators are being used to achieve the Chapter’s stated objectives.<sup>55</sup>

## V. DISCUSSION

California spends well over \$1 billion per year on its environmental programs.<sup>56</sup> With such a sizeable investment, it is natural to wonder how effectively the state’s funds are being spent in these endeavors. Chapter 4 codifies an existing structure and set of processes for answering that question.<sup>57</sup> The current \$700,000 per year investment in the EPIC program<sup>58</sup> represents less than one-tenth of one percent of the state’s total spending on environmental programs, and Cal/EPA estimates it will cost about \$1.1 million per year to maintain going forward.<sup>59</sup> Allocating a small but non-trivial portion of the overall budget for environmental programs to measure the effectiveness of those programs with scientifically collected data is a worthwhile experiment, one that should reap significant returns on the overall environmental program investment.<sup>60</sup> Yet at present the EPIC program is discretionary,<sup>61</sup> it is not explicitly funded in the 2003-2004 state budget,<sup>62</sup> and even with the enactment of Chapter 4 there is no guarantee that the program will either continue in its present form, much less expand to realize the broad

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52. *Id.* § 71081(e).

53. *Id.* § 71081(d).

54. *Id.* § 71081(f).

55. *Id.* § 71080(c).

56. *LAO Budget Analysis*, *supra* note 1; *AB 1360 Environmental Protection Indicators for California Fact Sheet*, *supra* note 1.

57. ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS, COMMITTEE ANALYSIS OF AB 1360, at 2-3 (Apr. 8, 2003).

58. SENATE COMMITTEE ON ENVIRONMENTAL QUALITY, COMMITTEE ANALYSIS OF AB 1360, at 4 (July 7, 2003).

59. ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS, COMMITTEE ANALYSIS OF AB 1360, at 2 (Apr. 8, 2003).

60. *See EP Indicators*, *supra* note 8, at 278 (characterizing the EPI project as aggressive and concluding that “pursuing the development of meaningful, well-founded environmental indicators will yield substantial rewards for California by optimizing the efforts of its environmental and natural resource programs”).

61. SENATE COMMITTEE ON ENVIRONMENTAL QUALITY, COMMITTEE ANALYSIS OF AB 1360, at 3 (July 7, 2003).

62. ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS, COMMITTEE ANALYSIS OF AB 1360, at 2 (Apr. 8, 2003); Department of Finance, 2003-2004 Governor’s Budget, Office of Environmental Health Hazard Assessment at 58-61, *available at* <http://www.documents.dgs.ca.gov/osp/GovernorsBudget04/pdf/ep.pdf> (last visited Apr. 25, 2003) (copy on file with the *McGeorge Law Review*).



potential for feeding the EPIC data back to the myriad of state programs which currently define and enforce California's environmental laws and regulations.<sup>63</sup>

Bills like AB 1020, SB 923, and SB 352 would clearly be more effective if EPIC-style environmental monitoring were ongoing, as would future legislation intended to promote environmental justice. The goals of these statutes are those of fundamental environmental protection: to make polluters pay for the costs of the harm they have done,<sup>64</sup> to prevent the placement of schools near high-pollution roadways,<sup>65</sup> and to more tightly control the granting of waivers from the normal restrictions on discharge of pollutants into the water supply.<sup>66</sup> The more data available for enacting and enforcing the statutes necessary to achieve such goals, and the more that data is the result of unbiased scientific research conducted by the State, the more likely it is that those without wealth and political influence—the very constituents that advocates of environmental justice intend to protect—will prevail.<sup>67</sup> It is not hard to imagine how, for example, the monitoring requirement of SB 923 could be covered by the ongoing monitoring done under the EPIC/Chapter 4 umbrella. Indeed, the data that could be made available by the EPIC program may spur efforts to use that information in the advancement of the interests of those most effected by the environmental conditions that that data describes.<sup>68</sup>

Given Chapter 4's explicitly stated goal to use the EPIC data to evaluate "the disproportionate impact [of environmental conditions] on low-income communities and communities of color,"<sup>69</sup> the question arises as to precisely how the results of such an evaluation might be used. Chapter 4 requires Cal/EPA to report biennially to the Governor and Legislature on the environmental indicators, to make that report available to the public on the agency's website, and specifically to discuss in that report "the manner in which the environmental indicators are being used by the agency to meet the objectives" enumerated in the Chapter.<sup>70</sup> Furthermore, the Advisory Committee on Environmental Justice has stressed the need for public participation in the planning process for environmental programs.<sup>71</sup> In order to

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63. See SENATE COMMITTEE ON ENVIRONMENTAL QUALITY, COMMITTEE ANALYSIS OF AB 1360, at 4 (July 7, 2003) (indicating that the "EPIC Project presents the Legislature with an opportunity to step in and guide the future development of the project").

64. See *supra* notes 32-34 and accompanying text.

65. See *supra* notes 40-42 and accompanying text.

66. See *supra* notes 35-39 and accompanying text.

67. See William J. Kelly, *Environmental Justice Rising*, CAL. J., May 1, 2003, at 20 (describing the efforts of low-income communities to secure funding for private environmental monitoring in their neighborhood and quoting Romel Pascual, Cal/EPA assistant secretary for environmental justice, regarding the agency's plans for developing comprehensive scientific methodologies to assess cumulative risk from pollution).

68. See *id.* (quoting Pascual who suggested that Cal/EPA "and other environmental agencies will become 'more engaged' in land-use issues, traditionally the exclusive domain of local government").

69. CAL. PUB. RES. CODE § 71080(c) (enacted by Chapter 4).

70. *Id.* § 71081(c).

71. See *EJ Advisory Committee Recommendations*, *supra* note 24, at 16-17 (stating that "[i]mproving

achieve such participation, the Committee has recommended “[e]ducational, technical, and other assistance . . . to support meaningful participation in environmental decisions.”<sup>72</sup> While such recommendations are preliminary, it is natural to see how scientifically collected data like the EPIC environmental indicators may become an integral part of the information that citizens regularly use to more effectively participate in the state’s environmental decision making process.<sup>73</sup> There has been a clearly expressed need for such information for just that purpose.<sup>74</sup> Driven by existing law,<sup>75</sup> the Advisory Committee has recommended improving “research and data collection” to promote and address environmental justice related to the health and environment of communities of color and low-income populations.<sup>76</sup> Furthermore, the Committee has recognized the need for such data to be available to the public, specifically for the mandated environmental justice goals.<sup>77</sup>

## VI. CONCLUSION

The statutory implementation of environmental justice in California is still new,<sup>78</sup> and until recent years has been carried out in uncoordinated, ad hoc ways. In light of the policies implemented by state agencies and the environmentally significant actions by businesses, there is “a concern that current methods of evaluating costs and benefits do not adequately address the wider costs to society and benefits of environmental decisions, or the distribution of those costs and benefits.”<sup>79</sup>

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public participation in environmental decision-making forms the foundation for successful implementation of . . . other goals,” and that “[m]eaningful public participation is critical to the success of any effort to address environmental justice issues”).

72. *Id.* at 17.

73. *See Kelly, supra* note 67 (explaining that environmental justice advocates are currently seeking such data to assist them in their fight for equity).

74. *See EJ Advisory Committee Recommendations, supra* note 24, at 21 (describing the need to identify “a set of criteria or indicators that can be used as a preliminary assessment to locate and prioritize potential environmental justice problems, and how the prioritized information will be used”).

75. *See* CAL. PUB. RES. CODE § 71113 (West Supp. 2004) (requiring the Cal/EPA to develop a strategy to address any gaps in their policies that impede environmental justice).

76. *See EJ Advisory Committee Recommendations, supra* note 24, at 30 (stating that: more information is needed that specifically addresses the health and environment of communities of color and low-income populations if the goal of environmental justice is to be ensured. In addition, community members need to have greater involvement in the research process if the data are to be meaningful and useful).

77. *See id.* at 32 (stating that during its public comment period, “[t]he Committee heard many complaints that when research had been done, or data was thought to exist, it was not available to those who had need of it”).

78. *See id.* at 3 (stating that “[e]nvironmental justice became part of California’s laws through legislation enacted between 1999 and 2001”).

79. *Id.* at 14.

The EPIC factors may prove to be a significant step in the pursuit of environmental justice. The public's access to the information collected under the program may be an important part in the success of that effort. In addition, one can envision a time when those who bear the burden resulting from uninformed environmental policymaking will utilize the data collected under the program codified by Chapter 4 and use it to advance their position in the policy making process.